

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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CLERK OF COURT  
Thomas J. Hart

MEMORANDUM

TO: Court Users

FROM: Thomas J. Hart

DATE: December 3, 1999

RE: Changes to Federal Rules of Bankruptcy  
Procedure effective December 1, 1999

Attached is a copy of a May 11, 1998 report from the Advisory Committee on Bankruptcy Rules regarding proposed amendments that were approved without change effective December 1, 1999.

Item I. A. 2 (beginning on page 3 of this memorandum), provides a synopsis of the changes.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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**TO:           Honorable Alicemarie H. Stotler, Chair**  
**Standing Committee on Rules of Practice**  
**and Procedure**

**FROM:       Honorable Adrian G. Duplantier, Chair**  
**Advisory Committee on Bankruptcy Rules**

**DATE:        May 11, 1998**

**RE:           Report of the Advisory Committee on Bankruptcy Rules**

**Introduction**

The Advisory Committee on Bankruptcy Rules met on March 26-27, 1998, at the Winrock International Conference Center in Morrilton, Arkansas. The Advisory Committee considered public comments regarding proposed amendments to 16 Bankruptcy Rules that were published in August 1997, and, after making certain revisions, approved the proposed amendments for presentation to the Standing Committee for final approval and transmission to the Judicial Conference.

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The Standing Committee has requested that the Advisory Committee consider certain questions relating to attorney conduct, local rules, electronic submission of public comments, and the rules promulgation timetable. The Advisory Committee's responses regarding these issues are discussed as "Information Items" in this report.

**I. Action Items**

- A.   Proposed Amendments to Bankruptcy Rules 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014, Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1997.

The public hearing scheduled for January 30, 1998, was canceled for lack of witnesses, but the Advisory Committee received letters from 18 commentators. One commentator, Jack E. Horsley, Esq., of Illinois, commented generally that he favors all the proposed amendments. The other 17 commentators offered specific comments or suggestions relating to one or more of the published amendments. These letters are summarized on a rule-by-rule basis following the text of each rule in the GAP Report (see pages 6-37 below). These comments and recommendations were reviewed at the Advisory Committee meeting in Arkansas and, as a result, several revisions were made to the published draft. These post-publication revisions are identified in the GAP Report.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1017 is amended to specify the parties entitled to notice of a United States trustee's motion to dismiss a voluntary chapter 7 or chapter 13 case based on the debtor's failure to file a list of creditors, schedules, and statement of financial affairs. Currently, all creditors are entitled to notice of a hearing on the motion if it is a chapter 7 case. To avoid the expense of sending notice to all creditors, the proposed amendments provide that the debtor, the trustee, and any other entities specified by the court, are the only parties entitled to notice. The rule is amended further to provide that a motion to suspend all proceedings in a case or to dismiss a case for substantial abuse of chapter 7 is governed by Rule 9014. Other amendments are stylistic or designed to delete redundant provisions that are covered by other rules.

(b) Rule 1019 is amended (1) to clarify that a motion for an extension of time to file a statement of intention regarding collateral must be filed or made orally before the time expires; (2) to provide that the holder of a postpetition, preconversion administrative expense claim is required to file a request for payment under § 503(a) of the Code, rather than a proof of claim under Rule 3002; (3) to provide that the court may fix a time for filing preconversion administrative expense claims; and (4) to conform the rule to the 1994 amendment to § 502(b)(9) and to the 1996 amendment to Rule 3002(c)(1) regarding the 180-day period for filing a claim of a governmental unit. Other amendments are stylistic.

(c) Rule 2002(a)(4) is amended to delete the requirement that notice of a hearing on dismissal of a chapter 7 case based on the debtor's failure to file required lists,

schedules, and statements, must be sent to all creditors. This amendment conforms to the proposed amendments to Rule 1017 which requires that the notice be sent only to certain parties. This subdivision is amended further to delete the requirement that notice of a hearing on dismissal of a case based on the debtor's failure to pay the filing fee must be sent to all creditors. Rule 2002(f) is amended to provide for notice of the suspension of proceedings under § 305 of the Code.

(d) Rule 2003(d) is amended to require the United States trustee to mail a copy of the report of a disputed election for a chapter 7 trustee to any party in interest that has requested a copy of it. Also, the amended rule gives a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute. These amendments and other stylistic revisions are designed to conform to the 1997 amendments to Rule 2007.1(b)(3) on the election of a trustee in a chapter 11 case.

(e) Rule 3020(e) is added to automatically stay for ten days an order confirming a chapter 9 or chapter 11 plan so that parties will have sufficient time to request a stay pending appeal.

(f) Rule 3021 is amended to conform to the amendments to Rule 3020 regarding the ten-day stay of an order confirming a plan in a chapter 9 or chapter 11 case. The other amendments are stylistic.

(g) Rule 4001(a)(3) is added to automatically stay for ten days an order granting relief from an automatic stay so that parties will have sufficient time to request a stay pending appeal.

(h) Rule 4004(a) is amended to clarify that the deadline for filing a complaint objecting to discharge under § 727(a) is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. Rule 4004(b) is amended to clarify that a motion for an extension of time for filing a complaint objecting to discharge must be filed before the time has expired. Other amendments are stylistic.

(i) Rule 4007 is amended to clarify that the deadline for filing a complaint to determine dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is held on that date. This rule is amended further to clarify that a motion for an extension of time for filing a complaint must be filed before the time has expired. Other amendments are stylistic.

(j) Rule 6004(g) is added to automatically stay for ten days an order authorizing the use, sale, or lease of property, other than cash collateral, so that parties will have sufficient time to request a stay pending appeal.

(k) Rule 6006(d) is added to automatically stay for ten days an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) so that parties will have sufficient time to request a stay pending appeal.

(l) Rule 7001 is amended to recognize that an adversary proceeding is not necessary to obtain injunctive or other equitable relief when the relief is provided for in a chapter 9, chapter 11, chapter 12, or chapter 13 plan. Other amendments are stylistic.

(m) Rule 7004(e) is amended to provide that the ten-day time limit for service of a summons does not apply if the summons is served in a foreign country.

(n) Rule 7062 is amended to delete the additional exceptions to Rule 62(a) F.R. Civ. P. The deletion of these exceptions — which are orders issued in contested matters rather than adversary proceedings — is consistent with the amendment to Rule 9014 that renders Rule 7062 inapplicable to contested matters. For proposed amendments that provide a new automatic ten-day stay of certain orders, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

(o) Rule 9006(b)(2) is amended to conform to the abrogation of Rule 1017(b)(3).

(p) Rule 9014 is amended to delete Rule 7062 from the list of Part VII rules that automatically apply in a contested matter. Rule 7062, which provides that Rule 62 F.R.Civ.P. is applicable in adversary proceedings, is not appropriate for most orders granting or denying motions governed by Rule 9014. For proposed amendments that provide a new automatic ten-day stay of certain orders so that parties will have sufficient time to obtain a stay pending appeal, see the amendments to Rules 3020, 3021, 4001, 6004, and 6006.

3. *Text of Proposed Amendments Presented to the Standing Committee for Approval and Transmission to the Judicial Conference, GAP Report, and Summaries of Public Comments on Published Draft:*

Note: Text not included  
with Bankruptcy Court  
Clerk Thomas J. Hart's  
December 1, 1999  
memorandum.

